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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing)	
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Filing Date: March 17, 2017)	Case No.: PSH-17-0016
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Issued: June 23, 2017

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines), I have determined that the individual’s access authorization should not be restored.

I. Background

The individual is employed at a DOE facility as a contractor employee, in a position that requires that he possess a DOE security clearance. During various interviews conducted in 2014, 2015, and 2016, by the Office of Personnel Management, the DOE’s local security office (LSO), and a DOE-consultant psychologist (DOE psychologist), the individual maintained that he had abstained from alcohol since January 2014, with the exception of two beers in mid-2014. In May 2016, the LSO conducted a personnel security interview (PSI) with the individual. During the interview, the individual admitted that he had been untruthful about his abstinence and described his current consumption pattern as drinking beer and bourbon two or three weekends per month. In

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

October 2016, the DOE psychologist evaluated the individual a second time. During that evaluation, the individual reported his current level of alcohol consumption as two glasses of wine twice a week. However, laboratory tests were highly inconsistent with the level of alcohol consumption he described. The DOE psychologist concluded that the individual was a binge consumer of alcohol to the point of impaired judgment and that his repeated efforts to conceal or minimize his drinking involved deceit and constituted a mental condition that could impair his judgment, reliability, and trustworthiness.

The 2016 PSI and the DOE psychologist's evaluation did not resolve the DOE's security concerns. In a January 2017 letter (Notification Letter), the LSO informed the individual that it had reliable information that created a substantial doubt regarding his eligibility for a security clearance. Specifically, the Notification Letter stated that the LSO possessed information that raised security concerns under Adjudicative Guidelines E (Personal Conduct), G (Alcohol Consumption), and I (Psychological Conditions).

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The LSO submitted 14 exhibits (Exs. 1-14) into the record, and the individual submitted ten exhibits (Exs. A-J). At the hearing, the individual presented his own testimony along with the testimony of his former supervisor, his recovery program sponsor, his substance abuse treatment program counselor, and his girlfriend; the DOE presented the testimony of the DOE psychologist.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1998) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An individual must come forward with evidence to convince the DOE that granting him access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R.

§ 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.* In considering these factors, the Administrative Judge consults the Adjudicative Guidelines that set forth a comprehensive listing of relevant factors and considerations. *See* Adjudicative Guidelines.

III. The Notification Letter and the Security Concerns at Issue

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to Guidelines E, G, and I of the Adjudicative Guidelines. Guideline E concerns personal conduct that involves questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, and focuses on failure to provide truthful and candid answers during the security clearance process. As evidence of circumstances raising security concerns under this guideline, the LSO cited the individual's statements that he had abstained from alcohol since late January 2014, with the exception of two beers in mid-2014, at the following interviews related to the processing of his access authorization: personnel security interviews (PSIs) conducted in July and December 2014, an evaluation by the DOE psychologist in March 2015, and an OPM background investigation in February 2016. The individual admitted during a subsequent PSI in May 2016 that he had not been abstinent since January 2014 as he had claimed. The LSO also cited his statement to the DOE psychologist during a second evaluation in October 2016 that his alcohol intake was two glasses of wine or three beers each weekend, which the DOE psychologist concluded was highly inconsistent with laboratory test results and attributable to the individual's repeated efforts to conceal or minimize his drinking. Ex. 1 at 1. The individual's assertions of abstinence and his attempts to minimize the extent of his alcohol consumption are adequate evidence of the individual's failure to provide truthful and candid answers during the security clearance process and constitute conduct that raises security concerns due to lack of candor and dishonesty. Adjudicative Guidelines, Guideline E at ¶ 15.

Guideline G relates to alcohol consumption, and it provides that alcohol-related incidents such as driving while under the influence, habitual or binge consumption to the point of impaired judgment, and diagnoses by a medical professional of alcohol abuse or dependence are conditions that could raise a security concern and may be disqualifying. As evidence of circumstances raising

security concerns under Guideline G, the LSO cited a 2016 PSI during which the individual admitted that between January 2014 and January 2016, he drank three to four beers and one to two shots of bourbon on two to three weekends every month. At the same PSI, the individual reported that since January 2016 he had been drinking two glasses of wine or three beers per week, though he acknowledged that as a recovering alcoholic he should not be drinking alcohol at all. Furthermore, the LSO cited the DOE psychologist's conclusion that, as of October 2016, the individual was binge consuming alcohol to the point of impaired judgment without adequate evidence of rehabilitation or reformation. Ex. 1 at 2. These allegations adequately support the invocation of Guideline G, and they raise serious security concerns. The excessive consumption of alcohol often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines, Guideline G at ¶ 21.

Finally, Guideline I concerns mental and psychological conditions that can impair judgment, reliability, or trustworthiness, including a condition that, in the opinion of a duly qualified mental health professional, could cause such impairment. After evaluating the individual, the DOE psychologist concluded that his repeated efforts to conceal or minimize his alcohol consumption involved deceit, which in her opinion constituted a mental condition that could impair his judgment, reliability, and trustworthiness. Ex. 1 at 2.² His deceitful behavior, by its nature, raises security concerns. Adjudicative Guidelines, Guideline I at ¶ 27.

IV. Findings of Fact

The individual did not contest the allegations set forth in the Notification Letter or the DOE psychologist's opinion. Instead, he sought to mitigate the LSO's security concerns regarding his alcohol use.

The individual began consuming alcohol while in high school. He drank minimally until age 21, after which he drank moderately. Ex. 8 (October 2016 Report of DOE psychologist) at 4. By 2006, when he was married and a father, his intake and frequency had increased. He then stopped drinking for 22 months, "in an effort to shore up my marriage and to help my daughter" navigate a learning issue. Tr. at 121. He achieved abstinence through participation in Alcoholics Anonymous (AA), through which he learned about alcohol use as an addiction. *Id.* In 2008, however, he felt he was "healed," and began drinking again. *Id.* at 123. Faced with bankruptcy, divorce, and his mother's death during the years 2014 to 2106, his alcohol consumption had increased to three to four beers and two shots of liquor within three to four hours, two or three weekends a month. Ex. 8 at 4. Beginning in July 2014, however, the individual asserted on several occasions—to the LSO, to the DOE psychologist, to the psychiatrist treating him for depression, and to the OPM investigator performing his background investigation—that he had been abstinent since January or February 2014, except for one occasion in April or May 2014 when he drank two

² While the DOE psychologist concluded that the individual's pattern of deceit regarding consumption demonstrated an impairment of judgment, reliability and trustworthiness, she did not conclude that his consumption itself constituted a mental or psychological condition of a nature that would raise security concerns.

beers. Ex. 13 (July 2014 PSI) at 200; Ex. 12 (December 2014 PSI) at 69, 71-72, 100-01; Ex. 9 (March 2015 Report of DOE psychologist) at 3, 5; Ex. 11 (May 2016 PSI) at 67, 71 (denied alcohol use to psychiatrist in October 2015); Ex. 14 at 59 (interview with OPM investigator in February 2016, during which he stated he resumed drinking in December 2015).

At a May 2016 PSI, the individual admitted that he had not, in fact, been abstinent from alcohol since February 2014, had never stopped drinking except for short periods, and was continuing to drink. Ex. 11 at 82. Because the LSO was unable to resolve its security concerns through that PSI, the individual was referred to the DOE psychologist for a second evaluation in October 2016. In his interview with the DOE psychologist, the individual reported that his alcohol consumption during 2016 had “typically been two glasses of wine twice per week,” and that the last time he had been intoxicated was in mid-June when he had four or five beers with his brother. He also told the DOE psychologist that he felt his alcohol consumption was “in check,” though he had stated during the May PSI that he should not be drinking. Ex. 8 at 5. A blood test administered immediately after the DOE psychologist’s evaluation yielded a result that, according to the laboratory, is considered evidence of moderate to heavy ethanol consumption, “highly inconsistent” with the individual’s report of “two glasses of wine twice per week.” *Id.* at 6. The DOE psychologist concluded that the test results were most consistent with “heavy” or “binge” drinking of “more than two standard drinks per day averaged over a 30-day month.” *Id.* (quoting standard established by the Substance Abuse and Mental Health Services Administration and the Centers for Disease Control). She also concluded that the individual’s lack of candor concerning his alcohol consumption demonstrated a willingness to avoid the truth if he believed it could result in negative consequences for him, an “ingrained tendency” that “is unlikely to be easily changed” and “therefore raises concerns about his reliability and trustworthiness.” *Id.* The DOE psychologist recommended the following forms of treatment: weekly recovery group meetings, at which the individual would accurately represent his consumption; weekly individual counseling sessions to address alcohol issues with a goal of 12 months of abstinence, and to address his lack of candor; and frequent monitoring of his alcohol use through breath testing and, if possible, PEth testing.³ *Id.* at 8.

The individual began attending Celebrate Recovery (CR), a Christian-based addiction recovery program, in 2014. *Id.* at 36. At the same time, he continued to consume alcohol. *Id.* at 76. He attempted to hide his drinking from his girlfriend, who confronted him about it, at which point he admitted to her that he was still drinking. *Id.* at 96, 111. He testified that he realized at that moment that he could not, in fact, control his drinking, and ultimately stopped drinking on December 29, 2016. *Id.* at 119, 164. His abstinence since that date has been confirmed by the testimony of his girlfriend and his counselor, as well as by a lengthy series of breath alcohol test results and blood test results from January through April 2017. *Id.* at 95, 101, 203; Exs. A, B, C, D, G.

³ The presence of phosphatidylethanol (PEth) in blood indicates a period of prolonged, regular alcohol consumption or incidents of binge or heavy drinking within the past two to three weeks. “The Role of Biomarkers in the Treatment of Alcohol Use Disorders, 2102 Revision,” Substance Abuse and Mental Health Serv. Admin., SAMHSA Advisory, Vol. 11, Issue 2 (Spring 2012) at 2, 3.

To support his sobriety efforts, the individual began attending an intensive outpatient substance abuse treatment program on January 11, 2017, completing two of the three segments by April 2017; the third was scheduled for completion by mid-June 2017, after the date of the hearing. Tr. at 63. He has met individually with a counselor associated with the outpatient program for 12 sessions so far, beginning in February 2017. *Id.* at 89. The counselor testified that the individual is actively engaged in his recovery, complying with all requirements of the program, and has developed an understanding of alcohol misuse. *Id.* at 66, 135-36. When asked for a prognosis, the counselor stated that the individual was committed to abstinence and, when compared with others, was “in a very good place to succeed.” *Id.* at 72, 76. However, the counselor agreed with the DOE psychologist’s recommendation that 12 months of abstinence was appropriate in this case. *Id.* at 74. At the hearing, the individual testified that he intends to maintain his sobriety in the future by continuing his counseling until both he and his counselor decide to stop, by continuing in aftercare after his individual counseling concludes, by continuing to see his psychiatrist, and by continuing to be tested for alcohol use. *Id.* at 130-31, 148. In addition, the individual continues to attend CR, though he now participates fully and works closely with a sponsor he enlisted about two months before the hearing. *Id.* at 40, 131. The sponsor testified that before the individual’s access authorization was suspended, the individual lacked conviction; he now understands the ramifications of drinking, speaks up at meetings, and demonstrates a strong conviction to sobriety. *Id.* at 43-44. Finally, the individual also attends AA meetings and is committed to continuing to do so. *Id.* at 137-41. His support system includes his girlfriend, his CR mentor, and his counselor, as well as the members of his CR and AA groups. *Id.* at 141, 157.

At the hearing, a great deal of testimony concerned the individual’s lack of candor. The individual’s supervisor of 15 years stated that he had never questioned the individual’s trustworthiness or integrity, as an employee or as a holder of a security clearance. *Id.* at 22-23, 30. His girlfriend testified that he is by nature trustworthy, and the only time she observed him to be less than forthright was when he drank a beer in her garage, out of her sight; though when she confronted him, he freely admitted what he had done. *Id.* at 106, 107, 111. Nevertheless, as stated above, the individual provided misinformation about his alcohol use on a number of occasions by either denying or minimizing the extent of his consumption. In his testimony, the counselor stated that denial and minimization of alcohol use is part of the addiction itself, but noted that he has observed no “slippage;” the individual is now truthful and open in his representations. *Id.* at 66, 82. The counselor also stated that dishonesty of this nature may also be rooted in depression, but he believed that the individual’s depression was resolving and no longer raised a concern for his honesty. *Id.* at 73, 79. The individual testified that he willfully misrepresented his alcohol consumption because his job was the sole part of his life that made him feel valued, and he could not risk losing his security clearance. *Id.* at 135-36, 146.

Finally, the DOE psychologist testified at the hearing after listening to all of the previous testimony. She stated that, had the individual been truthful to her during each evaluation, she would have diagnosed him with alcohol dependence both times. Her conclusions—of no alcohol disorder in 2015, and of binge consumption to the point of impaired judgment in 2016—were based on the individual’s reports of misinformation. *Id.* at 182; *see* Ex. 8 at 8, Ex. 9 at 5. She testified that her

recommendations would have differed as well, stating that she would have recommended 12 months of treatment, as she had recommended, but lifelong abstinence rather than 12 months. Tr. at 183. Nevertheless, the DOE psychologist offered her opinion that the individual was receiving appropriate treatment, had an impressive support network, and was “on the right path.” *Id.* at 184. Her concern, however, was that these positive steps were quite recent: the individual had not yet completed his intensive outpatient treatment and he had been abstinent for only four months at the time of the hearing. *Id.* at 185. As a result, she was not yet convinced that the individual had been reformed or rehabilitated from his alcohol problem. *Id.* at 184. With respect to his dishonesty, the DOE psychologist believed that the individual was now being truthful when asserting his abstinence, in part because his claim was supported by test results. *Id.* at 185. She also believed that his deceit related almost exclusively to his alcohol use, and that he was generally truthful regarding other aspects of his life. *Id.* at 186-87, 199-200. She noted further that, according to the testimony she heard, his counselor is appropriately addressing the deceit issue in their sessions. *Id.* at 200.

V. Analysis

The evidence in this case indicates that the individual had abstained from alcohol use for approximately four months as of the date of the hearing, that he acknowledges his alcohol use disorder and has taken steps to overcome it, and that he has received a positive prognosis from a substance abuse professional who is treating him. Moreover, though he deceitfully reported his alcohol consumption in the past, he has been truthful and compliant with his recommended treatment since he stopped drinking about four months ago. Nevertheless, I am not convinced that the chances of relapse are sufficiently remote to restore the individual’s access authorization.

Guideline G sets forth four conditions that can mitigate security concerns arising from an individual’s habitual or binge consumption of alcohol to the point of impaired judgment: the behavior occurred long ago or infrequently, or is unlikely to recur; the individual acknowledges his alcohol issues, has taken action, and has established a pattern of responsible drinking or abstinence; he is a current employee who is participating in a treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and he has, at a minimum, successfully completed outpatient counseling or rehabilitation and aftercare. Adjudicative Guidelines, Guideline G at ¶ 23(a), (b), (c), (d). In the present case, the evidence discussed above fails to establish that the individual has met any of the enumerated conditions. He was binge drinking alcohol as recently as four months ago. *Id.* at ¶ 23(a). Although the individual has acknowledged his issues with alcohol and has provided evidence of actions taken to overcome this problem (e.g., participation in AA and CR and in individual counseling), the experts agree that four months of abstinence do not establish a sufficient pattern of responsible use. *Id.* at ¶ 23(b). While the individual’s current progress is a great step toward recovery, I cannot find that his four months of abstinence are sufficient to establish a pattern of responsible use such that it removes doubt concerning his judgment. Furthermore, while the individual is a current employee who is participating in a counseling or treatment program, he has a history of previous alcohol-use treatment followed by relapse. *Id.* at ¶ 23(c). Finally, the individual has not yet completed his

intensive outpatient counseling or rehabilitation along with any required aftercare, maintained a pattern of abstinence for the recommended duration, or received an adequately favorable prognosis by the DOE psychologist. *Id.* at ¶ 23(d). There is no dispute that the individual has followed the DOE psychologist's recommendations for four months. During the hearing, however, the DOE psychologist expressed her opinion that the individual needed more than four months of his present behavior to get past the riskier stage of early recovery. Accordingly, I find that the individual has not resolved the security concerns raised under Guideline G.

Guidelines E and I relate to the individual's pattern of willfully providing false information when questioned about the extent of his alcohol consumption. The opinions of the witnesses, including the mental health professionals who testified at the hearing, uniformly support a finding that the individual's deceitful behavior was almost exclusively limited to his self-reporting of his alcohol consumption, undertaken to place himself in a more favorable light to retain his security clearance and his job. Denial and minimization of alcohol use is a common symptom of alcohol abuse, and appears to explain the individual's behavior. Nothing in the record indicates that he is deceitful in any other aspect of his life. To the contrary, witnesses who share long histories with the individual consider him to be honest, reliable, and trustworthy.

Conditions that could mitigate a security concern for personal conduct under Guideline E include, in this case, prompt, good-faith efforts to correct the omission, concealment, or falsification; evidence that the offense is minor, not recent, infrequent, or unlikely to recur; and acknowledgment of the behavior and counseling to address it. Adjudicative Guidelines, Guideline E at ¶ 17(a), (c), (d).⁴ The individual minimized and denied alcohol use for several years, until quite recently. And while I recognize that the individual has acknowledged his deceit and is receiving counseling to address it as part of his alcohol abuse treatment, the likelihood that this behavior will not recur depends heavily on his success in abstaining from alcohol, and it is too early to predict that success.

Similarly, conditions that could mitigate a security concern for a psychological condition that can impair judgment, reliability, or trustworthiness under Guideline I include, in this case, compliance with treatment for a condition that is controllable with treatment; a favorable prognosis; an expert opinion that the condition has a low probability of recurrence or exacerbation; and the absence of indication of a current problem. *Id.*, Guideline I at ¶ 29(a), (b), (c), (e).⁵ The mental health experts who testified agreed that the individual is compliant with his treatment and that he is not acting deceitfully at this time. Nevertheless, because his treatment is still in its early stages, a favorable prognosis is premature at this juncture. After considering those mitigating factors, I find that the individual has not fully mitigated the LSO's security concerns under Guidelines E and I.

⁴ Guideline E provides other potential mitigating factors, not relevant here. See *Id.*, Guideline E at ¶ 17(b), (e), (f).

⁵ One of the mitigating factors provided in Guideline I is likewise not relevant here. See *Id.*, Guideline I at ¶ 29(d).

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the individual's eligibility for a security clearance under Guidelines E, G, and I. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the individual has not presented sufficient information at this time to resolve the security concerns raised by the derogatory information recorded in the Notification Letter. Thus, I cannot conclude that restoring the individual's DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Official of Hearings and Appeals

Date: June 23, 2017